# The Solicitors' Journal

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## Current Topics.

### Shakespeare and the Law.

MR. JUSTICE BENNETT delighted listeners in his court on 2nd December by devoting part of his judgment in an action for an injunction and damages for breach of contract to produce a popular musical play in its entirety and in a first-class manner, to an examination of the literary merits of the lyrics of the play. There had been some expert evidence to the effect that the "continuity of the story" had been destroyed and the "balance of the play" had been upset, but his lordship observed that with all respect to the authors, although the play was highly successful, there was no literary merit in the lyrics, with one exception, which, his lordship said, displayed the touch of a master. It was one which conjured up an early English morning on a summer's day. In it there was not one word that was too much. The lyric began with the words "Hark, hark the lark." It is refreshing to know that the law of England is interpreted and applied in these harsh days by men who are so sincerely appreciative of the fine flower of English literature and who can pause for a minute or two to pay homage to the greatest poet of all time. Shakespeare himself would have appreciated this homage from the bench, for one tradition has it that a fellow native of Stratford-on-Avon procured him employment in a lawyer's office on his arrival in London. LORD CAMPBELL in his "Shakespeare's Legal Acquirements" in 1859 attributes his knowledge of legal matters to his early intercourse with members of the Inns of Court. This seems to be borne out by Tranio's "And do as adversaries do in law, strive mightily but eat and drink as friends" in "The Taming of the Shrew." Perhaps Falstaff's "the rusty curb of old father antick, the law" was written with a memory of Shakespeare's father's litigation. Cloten's lovely song "Hark, hark the lark" from "Cymbeline," deserves all the homage that can be paid to it, and indeed the author himself did not think meanly of it, as he described it as "a wonderful sweet air, with admirable rich words to it."

### Landlord and Tenant (Requisitioned Land) Bill.

THE objects of the Landlord and Tenant (Requisitioned Land) Bill, which was presented in the House of Commons on 2nd December, are described in the preamble as being "to provide for the disclaimer of leases comprising land of which possession has been taken in the exercise of emergency powers, for the reduction in certain cases of the rent and other periodical sums payable under or in connection with leases comprising such land, for requiring the continuance, after possession of such land has been taken as aforesaid, of certain services provided by the landlord and for purposes connected with the matters aforesaid." Disclaimer is to apply only to leases of land used by the tenant or a member of the tenant's family as his residence or partly as his residence and partly for the purposes of his business or profession. The lease must either provide that the term should expire not later than five years after the material date (either the passing of the Act, or the date of taking possession, if later), or that the term shall end with the end of the war or not later than twelve months after the end of the war. This provision, if passed, appears to give statutory approval to the decision of ROWLATT, J., in *Great Northern Railway Co.* v. *Arnold*, 33 T.L.R. 114, that a lease for the duration of the war was not too vague to be enforced. There is special provision enabling the tenants of "multiple leases," where all the separate tenements would be disclaimable if held under separate leases, to disclaim. The lessons of the application of the Landlord and Tenant (War Damage) Act, 1941, are appreciated in the Bill and where any lease is deemed to have been surrendered the rent for the period during which the surrender is deemed to have taken effect is to be apportionable, whether the rent under the lease is payable in advance or otherwise. There is also provision for a reduction of the rent during the period of requisitioning, where the rent under the lease is increased by reason of the landlord undertaking liabilities to pay rates and taxes, repairs and insurance, or obligations to provide services or carry out improvements. The Bill contains provision for the settlement of disputes by the county court. The Bill represents an instalment of the recommendations made by Mr. JOHN MORRIS, K.C., in his report which was presented to Parliament on 11th September (*ante*, p. 385), and those responsible deserve congratulations for its prompt preparation.

### The National Service Bill.

THE National Service Bill, which was presented in the House of Commons on 4th December, commences by declaring that all persons of either sex who are for the time being in Great Britain are liable to national service, whether under the Crown or not, and whether in the armed forces of the Crown, in civil defence, in industry or otherwise. Liability to be called up for service in the armed forces of the Crown is extended to British subjects who, at the date of the royal proclamation or at the date of entry into Great Britain if after that date, were fifty-one years of age. Persons who had ceased to become liable for service on attaining the age of forty-one years, having previously been liable under the principal Act of 1939, may make applications for postponement certificates, even though they had made previous applications under the 1939 Act, whatever the result of such applications. It seems fairly certain that with the increasing shortage of personnel in the legal profession at least, these applications for postponements will be more numerous than before. Where a person's medical examination is completed before the passing of the present Bill the Minister may refrain from dismissing his application for a postponement certificate, notwithstanding that the application is made more than two days after the completion of his medical examination and that the delay in making the application is not related to the grounds thereof. The National Service Acts, 1939 to 1941, are to apply in relation to women as they apply to men, with the substitution of the W.R.N.S., the A.T.S. and the W.A.A.F. for the armed forces of the Crown. The Bill also provides that where a person has since 3rd September, 1939, served in the armed forces of the Crown (other than the Home Guard) or has been called up for civil defence under the National Service Act, 1941, and has been discharged, he shall be liable to be called up. Exemptions for conscientious objection or other recognised grounds are not affected. As far as women are concerned, they are to have the statutory safeguards of the National Service Act, 1939, including those relating to conscientious objection and exceptional hardship. The Bill

also exempts married women and any woman who has living with her a child of hers under the age of fourteen, including a stepchild, an adopted child, and an illegitimate child.

## Patents and Designs.

On 2nd December the Patents and Designs Bill was read a second time in the House of Lords and committed to a committee of the whole House. Lord Templemore, in moving the reading, explained that the Bill was a technical measure which sought to amend the Patents and Designs Acts, 1907 to 1939, in respect of three distinct matters, all concerned with situations which had arisen or taken on importance owing to the war. At present a patent cannot be extended for more than five years, or in exceptional cases, ten years, whether for war or other reasons. Clause 1 proposes that patents should be capable of being further extended on account of war losses, notwithstanding previous extensions, and the extension be allowed at the discretion of the court up to ten years where a patentee, as such, has suffered loss or damage through a war in which His Majesty is engaged. Clause 2 extends the rights of Government departments to use inventions and designs. Clause 3 adds two new clauses, 91B and 91C, to the Patents and Designs Acts to deal with certain problems that have arisen in connection with the exchange of information as to inventions with the U.S.A. and the supply of articles under lease-lend arrangements. In view of the communication of inventions between the two countries, it is now desirable that the inventions communicated or embodied in articles supplied shall be protected by a patent or by designs registration (still under secrecy arrangements where necessary) in the country to which they have been communicated. The times within which applications for priority can be made in respect of these hitherto secret inventions have expired in many cases, and the new cl. 91B accordingly enables the Board of Trade to make rules to extend those times on terms of reciprocity with the other country concerned.

## Man Power.

In a White Paper on Man Power (Cmd. 6324) it is pointed out that a Royal Proclamation made on 27th November extends the liability for service in the Forces to men who on that date had reached the age of eighteen, and the first half of the 1923 age class (i.e., men born between 1st January and 30th June, 1923, both dates inclusive) will be required to register on 13th December, but will not be required to join their units before January, by which time they will all have reached the age of eighteen and a half. Special arrangements will be made, as on the occasion of the registration of the 1921 and 1922 age classes, for the deferment of the calling up of industrial apprentices, to enable students who are acquiring scientific and technical qualifications of great value to the war effort to complete their courses, for enabling boys at school studying for a higher certificate or a comparable examination in the summer to take such examination, and to enable men in their first year at the university to attest into the Forces and complete their first year course while undergoing military training in the Senior Training Corps or University Air Squadron. The system of block reservation under the Schedule of Reserved Occupations will, in general, be gradually replaced by a system of individual deferments. The transition will be effected by raising the age of reservation as shown in the December, 1941, Revise of the Schedule of Reserved Occupations by one year steps at monthly intervals beginning on 1st January. The scheme will not apply to certain classes of men covered by the present Schedule of Reserved Occupations, including men in the Merchant Service, the Royal Observer Corps, and certain branches of civil defence, veterinary surgeons, and men in student occupations. Certain other classes, including men in agriculture, building, coal-mining, and the Civil Service will be dealt with by special schemes of deferment. Decisions upon applications for deferment will be given by newly constituted district man-power boards. Steps have already been taken to cancel the deferment of all men under twenty-five, except those employed in certain occupations of the first importance. Women who are for the time being dealt with under the Registration for Employment Order will ordinarily be regarded as available to be moved to important employment unless they have special qualifications which are already being used in the national effort or occupy a pivotal position. Before any woman is transferred to other employment, her employer will have an opportunity of making representations.

## Share Transfers and Adjudication Stamps.

In view of the recent decision of the Court of Appeal in *Re Robb's Contract* (1941), 85 Sol. J. 412, that a conveyance of land on trust for sale ought on the true construction of s. 74 of the Finance (1909–10) Act, 1910, to bear an adjudication stamp, any controversy on the logic or convenience of the matter must be relegated to the ranks of academic questions, at least until the decision is reversed by the appropriate tribunal. For the present the only practical question to consider is what are the immediate results of the decision. We note that the Inland Revenue authorities have published a notice in *The Times* (25th November) and *The Daily Telegraph* (1st December) in which they state that the Chartered Institute of Secretaries and other bodies, with their concurrence, give public notice that where a written explanation of the facts is produced to the marking officer and marked by him with "Transfer passed for 10s.," his signature and his office stamp, the Board of Inland Revenue will not take proceedings against a registering officer for recovery of any penalty under s. 17 of the Stamp Act, 1891, in respect of any registration effected pending further development of the situation. Any transfer so marked may be presented for adjudication at any time, and will, as heretofore, if so presented, be in general adjudicated without further question as being duly stamped. Meanwhile, the notice states the whole position is under consideration.

## Vesting Orders and Enemy Property.

At the hearing of an executor's summons before Simonds, J., on 3rd December the Solicitor-General stated that it had been inaccurately said at a previous hearing that the Custodian of Enemy Property had refused to make a vesting order in the case although a codicil revoked a residuary bequest to an enemy alien resident in Germany. Uthwatt, J., had adjourned the matter to enable the executors to take steps to persuade the Board of Trade to make an order vesting in the Custodian such rights as the enemy residuary legatee might possess, and had added that it was perfectly ridiculous that the administration of an estate should be held up and British subjects be deprived of the opportunity of getting the property which they claimed. The Solicitor-General said that the whole thing was a complete misapprehension. It was quite wrong to say, as had been said before Uthwatt, J., that the Board of Trade had laid down a rule on the basis of which it would not make an order in any action in which the interests of any enemy concerned had not been clearly ascertained. The Board of Trade, he said, considered each case on its own merits if it was satisfied that there was a possible enemy interest which must be preserved in contemplation of arrangements to be made at the conclusion of peace. If a judge of the Chancery Division, he continued, said that an order ought to be made, the Board of Trade would be only too delighted to make it. In the present case the Board of Trade had never been asked to make a vesting order. It is well for everybody that this misapprehension as to the Board of Trade's attitude has now been finally removed.

## Evidence of Death.

The Registrar-General of Births, Deaths and Marriages has informed the Council of The Law Society, according to the current issue of *The Law Society's Gazette*, that it is his view that where a wife receives notification from the Registrar-General of Shipping and Seamen to the effect that her husband's name is shown on the list of the crew of a ship lost at sea and is presumed to have lost his life, she is entitled to regard herself as a widow and re-marry. Where the Registrar-General of Births, Deaths and Marriages is consulted by the local registration officer in any such case, he has advised that the registration officer could not refuse to accept the notice of marriage and to issue the certificate of marriage in due course, but that it should be made clear beforehand to both parties to the proposed marriage that the responsibility for the marriage rests with themselves and that in the event of the woman's husband subsequently found to be living at the date of their marriage, that marriage would be null and void. The decision of the Registrar-General is inevitable, having regard to the probabilities of the case. It recalls the celebrated leading case of *R.* v. *Tolson*, 23 Q.B.D. 168, in which a majority of nine judges to five held on appeal that *bona fide* belief in the death of a husband, even if seven years had not elapsed since the disappearance, afforded a good defence to a charge of bigamy. The husband in that case was reported to have gone down with a vessel bound for America, which was lost with all its crew. Six years later the wife went through a second form of marriage with another man, who knew all these facts. The husband later re-appeared, and the wife was convicted of bigamy by Stephen, J., and a jury. No better foundation for a *bona fide* belief in the death of a seaman could be obtained than a notification from the Registrar-General of Shipping and Seamen.

# A Conveyancer's Diary.

## Mortgagees and War Damage to Title Deeds.

In my recent article on "Destruction of Title Deeds" I discussed the position of a mortgagee (or his agent) who has in his possession the title deeds of the mortgagor, which deeds then suffer war damage. It seems that the Council of The Law Society, in the *Gazette* for November, have expressed a different view, based on an opinion which they had obtained. As various subscribers have written suggesting that I should comment here on the discrepancy between these two views, I have most carefully reconsidered the position and propose to set forth the reasons why I adhere to the opinion which I formerly expressed.

The Council of The Law Society begin by calling attention to the ordinary rules of law as to the liability of a mortgagee who is unable to produce the title deeds when the mortgagor desires to redeem. There are various old cases which put it beyond doubt that such a mortgagee is liable to take the necessary steps to put the mortgagor back in as good a position after redemption as he was before he mortgaged the property. This rule is, of course, *in pari materia* with that against clogs on the equity of redemption: equity will see that a borrower who redeems his property gets back that which he charged. On this point the Council cite (among other older cases) *James* v. *Rumsey*, 11 Ch. D. 398, and, as the rule which it establishes is common ground, it will be as well to state the facts and decision shortly. The plaintiff was lessee of certain property at Bournemouth for a term of ninety-nine years from a date in 1865. In 1872 the plaintiff mortgaged the property to Rumsey and Smith, sub-demising to them for the residue of the term less ten days, and delivered his title deeds to the mortgagees' solicitor, Reade. In September, 1876, the plaintiff gave notice to the defendants that he wished to redeem at once, offering three months' interest in lieu of notice, which offer was accepted. It was then discovered that the defendants had not got the lease, and the defendants said that it was lost. It was later discovered that Reade, the defendants' original solicitor, had fraudulently used the lease in August, 1876, as security for a loan to himself by one Mrs. Giles, with whom he deposited it. The plaintiff brought an action asking that the defendants should be ordered to surrender the premises to him on payment of what was due and to assure them to him as he might direct. He also asked for an order on them to deliver up the title deeds, and that if they were lost that the defendants should be ordered to execute an indemnity and an attested copy of the deed at their own expense and to pay damages and costs. Hall, V.-C., ordered that the plaintiff should be at liberty to take such proceedings as he might be advised for the recovery of the deed, and intimated that, unless some peculiar point arose later, the defendants would be ordered to pay the costs of those proceedings as well as of the actual action before him. He said that, on the authorities, the plaintiff was entitled to the indemnity for which he asked, and that he was also right in coming to the court to have the matter sifted and inquired into for the purpose of establishing his title and having it made clear, so that he might be able to deal with the property in future"; the learned Vice-Chancellor also said that there might "be some peculiarity in the settled practice of the court in respect of the loss of title deeds as between mortgagor and mortgagee, making the case not exactly like that of an ordinary liability of a bailee; but it seems to me, looking at the authorities, that a mortgagor is . . . (in these circumstances) entitled to an indemnity." The rule thus differs from the ordinary rules as between bailor and bailee, but on practice and procedure only. It is perfectly clear that a mortgagee is in no *better* position than any other bailee, but, owing to the court's special solicitude about matters of title and about mortgages, the rules of practice are more refined than those for a mere common law action against a bailee.

So much is clear. But the crucial passage in the Council's statement, from which I respectfully take leave to differ, is as follows: "The principle being thus established that in general a mortgagee, even where completely innocent of negligence, is nevertheless liable to give indemnity and to pay the costs of an action to certify the title, it appears to the Council to be immaterial by what agency the loss occurred, and that for the present purpose no just distinction can be drawn between an Act of God and an act of the King's enemies, since both, so far as concerns the individual citizen, occur by *force majeure*."

This pronouncement may have been correct so far as concerns equity and the common law apart from statute, though there seems doubt even of that, as I shall show. The point, however, is that in the present war the liability for damage done by the King's enemies, now known as "war damage," is regulated by statute. Thus, it is common knowledge that it was held in *Paradine* v. *Jane* (Aleyn, 26), in 1647, that a lessee was liable on his covenant for rent, notwithstanding that he had been ousted from the premises by "a certain German Prince, by name Prince Rupert, an alien born, enemy to the King and his Kingdom, (who) had invaded the realm with a hostile army of men." This rule was still in full force in the last war, and was applied by Darling, J., who held, in *Redmond* v. *Dainton* [1920] 2 K.B. 256, that a lessee was liable on his repairing covenant in respect of damage to the demised premises caused by a bomb dropped in an air-raid. With the prospect of more considerable war damage to property in this Kingdom than had been suffered in previous wars, Parliament, as is well known, passed various Acts in the days immediately before, and in the first week of, the present war, freeing persons from their obligations to make good damage to property so far as the same was caused by enemy action. Thus, the Landlord and Tenant (War Damage) Act, s. 1 (1), enacted that "where by virtue of provisions (whether express or implied) of a disposition or of any contract collateral thereto, an obligation . . . is imposed on any person to do any repairs in relation to land comprised in the disposition, those provisions shall be construed as not extending to the imposition of any liability on that person to make good any war damage occurring to the land so comprised." This subsection is not, of course, confined to leases (despite the Act's title), as a "disposition" is defined by s. 1 (5) as meaning "any instrument (including an enactment) or oral transaction . . . creating or transferring an interest in land." There is a similar provision for Scotland in the War Damage to Land (Scotland) Act, 1939, also passed on 1st September, 1939. As regards "goods," the relevant Act is the Liability for War Damage (Miscellaneous Provisions) Act, 1939, passed on 7th September, 1939. Section 1 (1) thereof provides that "where, in the case of a bailment of any goods . . . an obligation is imposed on the bailor or bailee by the provisions (whether express or implied) of any contract or by any enactment, rule of law or custom, . . . (*b*) to repair damage to the goods; (*c*) to replace the goods in the event of loss; (*d*) to restore the goods or deliver them up in good repair notwithstanding such loss or damage, . . . (*f*) to pay damages or compensation for any loss or damage to the goods; the obligation shall, subject to the following provisions of this section, be deemed not to extend to loss or damage by war." The "following provisions" of the section go only to this, that a bailee, who has been careless as to the place where the goods are, is not to have the defence afforded by s. 1 (1), and that certain *express* contractual liabilities to make good war damage are kept alive.

Now, I am fully aware that "goods" is an unusual term for title deeds, and also that the word is not defined in the Liability for War Damage (Miscellaneous Provisions) Act, 1939. But, in the first place, there is a good deal to be said for the view that deeds can fall within the description of "goods." The action of detinue, which is a chattel action, appears to lie in respect of them: see, for example, *Beaumont* v. *Jeffery* [1925] Ch. 1, *Spackman* v. *Foster*, 11 Q.B.D. 99, and *Miller* v. *Dell* [1891] 1 Q.B. 468. There are, of course, expressions in *Plant* v. *Cotterill* (1860), 5 H. & N. 430, which indicate that the title deed is part of the realty; but it is difficult to see how, even if a title deed is not "goods," the position is altered, as, if it is not "goods," it must be "land." If so, it would fall within s. 1 (1) of the Landlord and Tenant (War Damage) Act set out above. It seems to me quite clear that there is a scheme comprised in the legislation of the first week of September, 1939, and that the intention of Parliament, in passing the three Acts mentioned above, was to absolve persons from those contractual and quasi-contractual liabilities to make good war damage to realty and chattels to which they would, apart from statute, have been subject. That being so, I think it follows that title deeds must be in the same position as the land to which they refer, or, in the alternative, must be in the same position as ordinary chattels personal.

Finally, it seems to me that it is at least arguable that if the particular liability here discussed is outside the Acts of 1939, it is dealt with in the same sense as that indicated above by the general law. For, in *Paradine* v. *Jane* itself, in a passage which can perhaps most conveniently be consulted where it was quoted by Darling, J., in *Redmond* v. *Dainton*, at p. 258, the court distinguished those liabilities, like covenants to pay rent, which a party voluntarily takes on himself, from those which the law imposes on him. "And this difference was taken, that where the law creates a duty or charge, and the party is disabled to perform it without any default in him, and hath no remedy over, there the law will excuse him. *As in the case of waste, if a house be destroyed by tempest, or by enemies, the lessee is excused.* But where the party by his own contract creates a duty or charge upon himself, he is bound to make it good, if he may, notwithstanding any accident by inevitable necessity, because he might have provided against it by his contract." In view of this passage, and of the 1939

Acts, I think it is extremely likely that a mortgagee, who loses the mortgagor's title deeds through enemy action, could successfully argue (1) that in so far as his liability to restore the deeds rests on contract, it would have been enforceable at law, but that he has been relieved by the Acts, and (2) that there is no such duty to make good war damage anyhow, as the general liability is imposed, not by contract, but by the general law, and is subject to an exception for Act of God or of the King's enemies.

# Landlord and Tenant Notebook.

## War Damage Contemplated in Lease.

*Johnstone* v. *Swan Estates, Ltd.*, reported in *The Times* of 10th November, is an instructive case, though some of the points decided may never arise again. It is also an interesting case: for it shows that after 291 years someone took to heart the lesson of *Paradine* v. *Jane* (1647), Aleyn 26 (destruction of demised property no answer to claim for rent: as tenant should have thought of that before).

On 22nd July, 1938, the plaintiff took of the defendants a seven-year lease of a flat in a block of flats. They covenanted to provide essential services; his covenants included one to observe regulations, one of which prohibited him from taking coal or coke into the premises. And one clause provided that if the flat or any other part or parts of the mansion should be destroyed or damaged by any means other than the act or default of the tenant in such a way as to render the flat unfit for occupation, notice to determine the lease might be given within three months of that event by either party.

In his judgment, Morton, J., said that the reference to other parts of the mansion showed that the parties had in mind just such an event as had happened, which was the destruction of a portion of the block by an enemy bomb. This occurred on 9th September, 1940. It is, of course, clear that the clause would apply to other causes producing the same effect, and the learned judge's observation does not exclude this; but it is perhaps significant that the lease was made shortly before the affair at Munich.

The bomb damage did not affect the structure of the flat demised to the plaintiff, but it interrupted the services: electric light, gas, central heating, hot water, and the lift. And on the following day the plaintiff served, not a notice to determine under the clause mentioned, but a notice of disclaimer under the Landlord and Tenant (War Damage) Act, 1939. The landlords, it is said, "refused to accept" this notice, contending that the flat had been "passed by the local authority as being fit for occupation." They did not, however, take out a summons under s. 6 for a declaration that the notice was of no effect; instead, they served notice to avoid disclaimer on 20th September. Thereupon the plaintiff wrote giving notice to determine under the lease, and, after some correspondence, took out a summons to determine whether he was entitled to determine the lease and whether (on the agreed facts) the flat had been rendered unfit for occupation.

On the latter point his lordship said that while a cooking stove and candles might have been used and life in the flat was not altogether impossible, that was not the kind of occupation which the parties contemplated.

I may mention here that while the opening paragraph of the present report refers to this issue as being whether the premises were rendered unfit for *habitation*, the relevant clause is said to have used the expression "unfit for occupation," and is so referred to in the judgment. It may well be that in view of the nature of the property and the other provisions in the lease the distinction is one without a difference. If the lease contained no elaborate definition of "unfit" as does the Landlord and Tenant (War Damage) Act, 1939 (s. 24), which specially refers to "the class of tenant likely," "the standard of accommodation," etc., perusal of that definition provokes the thought that "unfit" being a relative term, regard must be had to the subject-matter and surrounding circumstances, especially the reference to "other parts of the mansion," and a flat cannot be fit for occupation without being fit for habitation. But, while in the case of low rental dwellings within the Housing Act, 1936, s. 2, we are dealing with a statutory and not a contractual standard, it is of interest to note that almost violent differences of opinion have been expressed on the effect of the words "in all respects reasonably fit for human habitation," namely, in the *obiter dicta* to be found in *Morgan* v. *Liverpool Corporation* [1927] 2 K.B. 131 (C.A.); the question therein left undecided, namely, whether a broken window-sash constituted a breach of the obligation, was only recently answered (in the negative) by *Summers* v. *Salford Corporation* [1941] K.B. 218 (C.A.) (discussed in the "Notebook" of 24th May last: 85 Sol. J. 238).

The defendants' contention that even if the flat was unfit the notice was ineffective was based on the principle of estoppel. The argument was that having given notice of disclaimer, the plaintiff could no longer invoke the lease, and reliance was placed on *Cooper* v. *Jax Stores, Ltd.* [1941] 1 K.B. 577 (see 85 Sol. J. 222)—(in that case, after serving notice to avoid disclaimer and taking out a summons to fix a rent under s. 11 (1) (*c*), landlords, by amendment, sought to convert their notice under s. 11 into notice of intention to apply for an order that the land had not been unfit—by virtue of s. 6. This, it was held, was impossible)—but Morton, J., held that it had no application to the facts before him.

Indeed, analysis of the situation tends to show that the defendants' argument might harm rather than help them. If the Act said that the effect of a notice of disclaimer was that the lease should be surrendered, the plaintiff might have answered that the snake, at all events, does not complain of being unnecessarily jumped upon after being killed. For the course of events is as follows: s. 4 (2) (*a*) entitles a tenant to serve a notice of disclaimer which, to change the metaphor, has the effect of a gambit. The landlord, if the land is unfit, has to decide whether to accept a surrender or to serve notice of disclaimer. The latter course nullifies the notice of disclaimer and keeps the lease (modified, it is true, by s. 11 (1)) alive, and it would seem that the landlord rather than the tenant is estopped, if there be any estoppel at all.

It may be observed that the particular provision giving the tenant a right to determine gave him what would seem to be more than ample time. It is a little surprising that landlords should agree to as long as three months; if a flat is unfit for occupation, one would expect the tenant to be able to decide within a week. If that had been the period in this case, the notice to avoid disclaimer served on 20th September would have been effective.

One can but speculate about why the plaintiff did not at once invoke his option to determine instead of his statutory right to serve notice of disclaimer. In either case his liabilities would be the same; he would be liable for rent up till the determination of the lease, and not liable for any dilapidations due to war damage. For the relief from liability to repair war damage is of general application, being effected by s. 1 in Pt. I—Modification of Obligation to Repair—and not by any of the provisions in Pt. II—Disclaimer and Retention of Leases.

# Rules and Orders.

S.R. & O., 1941, No. 1918/L.34.

SUPREME COURT, ENGLAND—Procedure.

The Rules of the Supreme Court (No. 7), 1941.

Dated November 25, 1941.

I, John Viscount Simon, Lord High Chancellor of Great Britain, in exercise of the powers conferred upon me by Section 1 of the Administration of Justice (Emergency Provisions) Act, 1939,* and of all other powers enabling me in this behalf, and with the concurrence of two other Judges of the Supreme Court, do hereby make the following Rules under Section 99 of the Supreme Court of Judicature (Consolidation) Act, 1925†:—

1. The provisions of Order LXIII, Rule 6 (which relates to the days on which offices are to be closed) shall have effect subject to the following modifications:—

(*a*) The several offices of the Supreme Court in London shall be closed from Christmas Day till Sunday the 28th day of December, 1941, inclusive, and on Saturdays, the 3rd and 10th days of January, 1942.

(*b*) The Principal Probate Registry at Llandudno and the District Probate Registries shall be closed from Christmas Day till Sunday the 28th day of December, 1941, inclusive.

2. Notwithstanding anything in Order LXIII, Rule 9, the office hours in the several offices of the Supreme Court in London shall be as follows:—

| | |
|---|---|
| During the Christmas Vacation .. .. | 10.30 a.m. to 2 p.m. |
| From the 7th January to the 7th February, 1942, inclusive— | |
| Week days other than Saturdays .. | 10.30 a.m. to 3.30 p.m. |
| Saturdays .. .. .. .. | 10.30 a.m. to 1 p.m. |

3. These Rules may be cited as Rules of the Supreme Court (No. 7), 1941.

Dated the 25th day of November, 1941.

*Simon*, C.

We concur,

*Caldecote*, C.J.

*Greene*, M.R.

* 2 & 3 Geo. 6, c. 78. † 15 & 16 Geo. 5, c. 49.

# To-day and Yesterday.

## LEGAL CALENDAR.

**8 December.**—The Middlesex election of 1768 was exceedingly stormy. Serjeant Glynn, liberal in his political opinions and associate of the irrepressible John Wilkes, opposed the ministerial candidate with the challenge "Wilkes and Liberty." The sheriffs opened the poll a little before eleven o'clock on the 8th December and all went well till the afternoon, when Glynn's adversaries organised a riot in which the mob stormed the hustings, closing the scene in confusion. At the Old Bailey the Lord Mayor behaved "in such a manner as will always secure him the esteem of his fellow citizens." When the jury were called, he asked if any were freeholders of Middlesex and released the eighteen who turned out to be so, in order that they might discharge their duty at Brentford. Glynn was elected by a majority of nearly three hundred.

**9 December.**—Dr. Levi Weil was a German Jew, who, having taken his degree at Leyden, built up a good practice in London but decided to augment his income by a part-time occupation as a gang leader. He invited seven poor Jewish acquaintances in Amsterdam to come over and join him in a scheme whereby they were to spy out likely houses in the vicinity of London by day and rob them by night. Their most sensational coup was an attack on a farmhouse lying off the King's Road, Chelsea, where a widow in good circumstances lived with her three children, two maids and two farm labourers. The gang forced an entry at ten o'clock, tied up the women, stabbed one of the men, who escaped on to the roof, and shot the other, who died the following afternoon. They then decamped with their booty. Some time afterwards one of the raiders, tempted by the reward offered, denounced his fellows. Dr. Weil and three of his accomplices were convicted and hanged at Tyburn on the 9th December, 1771.

**10 December.**—Chelsea was a lonely place in the eighteenth century. At nine o'clock one August evening, Crouch, the Earl of Harrington's cook, was walking along the King's Road when two men, one of them John Hambleton, a private in the Guards, stopped him demanding money. When he resolutely refused they shot at him without effect, and, though he defended himself well with his pocket-knife, they overpowered him, ripped open his stomach and beat his head with their pistol butts. He was found alive by some labourers next morning, but died three days later. He had fatally wounded one of his assailants, but Hambleton was convicted and hanged on the 10th December, 1753, at Tyburn.

**11 December.**—For a country gentleman to be hanged at the age of seventy-four for a crime committed thirty-five years before is something of a legal curiosity. William Horne was spoilt by his father when young and he became a local Lothario, indiscriminately pursuing every woman in reach. When his own sister was delivered of a child in February, 1724, he put it in a sack, rode five miles from home and left it in a haystack, where it died of exposure. His father, till his death at the age of a hundred and two, twenty-three years later, succeeded in hushing up the affair, and even afterwards it might have remained unknown had he not had a violent quarrel with a gentleman named Roe over some game rights. Roe followed up rumours of the old crime, procured the evidence of Horne's younger brother Charles, a victim of the avarice which was another unpleasant side of his character, and in the end the old man was hanged at Nottingham on the 11th December, 1759.

**12 December.**—On the 12th December, 1749, "ended the Sessions at the Old Bailey when John Edwards for burglary and felony, Edward Shorter, Patrick Dempsey, Edward Dempsey, William Davis, James Aldridge, William Tidd, Robert Hickson and Thomas Good for divers assaults and robberies received sentence of death."

**13 December.**—Here is some police court news of the 13th December, 1762: "A lieutenant of dragoons was decoyed into a house of ill-fame in Fleet Street by a woman of the town and was there robbed by the woman of the house and an accomplice of two £50 banknotes, one of £100 and about ten guineas in money. One Haynes, the master of the house, being carried before a magistrate, one of the notes was found crumpled up in his hand and the other two he disgorged on being squeezed by the throat by one of the constables who had observed something in his mouth when he was making his defence."

**14 December.**—On the 14th December, 1742, in the Court of Admiralty held at the Old Bailey, Thomas Rounce, of Great Yarmouth, was found guilty of high treason in voluntarily fighting against his country on board two Spanish privateers and being concerned in taking several different ships. He was accordingly condemned to the usual barbarous form of punishment, to be taken to the place of execution on a hurdle, hanged, cut down alive, and disembowelled

# Practice Note.

## Compensation for Requisitioned Property. Solicitors' Costs of Negotiation.

THE recent decision of the Divisional Court upon a special case stated under the Compensation (Defence) Act, 1939, s. 7, that the *expenses* incurred by a claimant in employing a solicitor *to negotiate the amount of compensation payable are not recoverable* under s. 2 (1) (*d*) as part of the compensation payable by the requisitioning authority, will be of far-reaching importance (*Rhodes* v. *Secretary of State for War* (1941), 58 T.L.R. 32; (1941), 3 All E.R. 407).

The military authorities, under Defence (General) Regulations, 1939, reg. 51 (1), took possession of Rhodes' house in October, 1940. He claimed a compensation rent of £45 per annum under s. 2 (1) (*a*). The amount was ultimately agreed, and he now claimed £5 5s. solicitors' costs incurred in negotiating the settlement. It was not said by the competent authority that it was unreasonable to employ solicitors. It was contended, however, that the authority was under no statutory liability to pay their costs and that such payment would be *ex gratia*. Although a very small amount only was here involved, yet, in view of the multitude of similar cases, the question was one of "great public importance."

Viscount Caldecote, C.J., pointed out that the only question was: were the "expenses" incurred by the claimant in employing solicitors to negotiate his compensation recoverable as—

> "expenses reasonably incurred . . . for the purpose of compliance with any directions given on behalf of His Majesty in connection with the taking possession of the land" (s. 2 (1) (*d*))?

Section 2 states the measure of compensation for taking possession of land. The amount of compensation may be settled by agreement, or, in default, the dispute may be determined by the General Tribunal; the tribunal may state in the form of a special case for the opinion of the court any question of law arising in the proceedings (ss. 7, 8). Once a case goes to the tribunal, that body has complete power over costs: it may award and assess, or direct the assessment of such costs as, in its discretion, it thinks "just," even to the extent of awarding costs to an unsuccessful claimant where such an award appears "justified on the merits" (s. 9 (1) (*c*)). Where, however, compensation is assessed by agreement, there is no such statutory power.

Are expenses of negotiation, then, expenses "for the purpose of compliance with directions"? The question answers itself. The expenses of a solicitor in making arrangements to comply with directions and to give possession would, of course, be recoverable. Yet—

> "there is a difference between expenses incurred in complying with the directions and expenses incurred in measuring the compensation for having complied with the directions" (at p. 409 of (1941), 3 All E.R.).

Thus, "the expenses of measuring the compensation for having complied with the directions are not recoverable as part of the compensation under s. 2" (*ibid.*).

Nor did the court look with favour upon the method of *ex gratia* payments under authority of the Treasury. Apart from the question of the Treasury's power to order such payments, compensation should be measured by the Act, not by departmental discretion; if that measure is inadequate, it should be changed in the proper way.

This principle will apply equally to the cost of surveyors.

It may well be thought desirable to amend the Act by including such negotiating expenses in the compensation recoverable.

# Obituary.

LIEUT. J. MICHAEL STURTON.

Lieut. J. Michael Sturton, Royal Artillery, has died at the age of twenty-one as the result of an accident while a prisoner of war in Germany. He was an articled clerk with Mr. Douglas P. Sturton, of Messrs. Gibson & Sturton, solicitors, 16, Castle Park, Lancaster.

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The Home Secretary has appointed Mr. BERTRAND WATSON to be Chief Magistrate of the police courts of the Metropolis, in succession to the late Sir Robert Ernest Dummett. Mr. Watson was recently appointed to Bow Street in succession to Mr. T. W. Fry.

Mr. C. J. RADCLIFFE, K.C., has been appointed Director-General of the Ministry of Information in succession to Sir Walter Monckton, K.C., who has taken up his appointment in Cairo as Director-General of British Propaganda and Information Services under the Minister of State. Mr. Radcliffe was called by the Inner Temple in 1924 and took silk in 1935.

# Notes of Cases.

## COURT OF APPEAL.

**de Buse and Others *v.* McCarty and Others.**

Lord Greene, M.R., Goddard and du Parcq, L.JJ. 29th October, 1941.

*Defamation—Libel—Notice of meeting of borough council containing defamatory statements—Notices sent to borough libraries—Privilege.*

Appeal from a decision of Wrottesley, J. (85 Sol. J. 369).

The facts, which are more fully stated in the report of the hearing below, were shortly as follows: Stepney Borough Council appointed a committee to inquire into a shortage of petrol at one of their depots. The committee in due course drew up a report which contained defamatory statements about the plaintiffs, employees of the council. The report was to be considered at the next meeting of the council. The notice, signed by the town clerk, with the agenda of the meeting, was, in accordance with s. 9 of the Metropolis Management Act, 1856, posted near the door of the building where the meeting was to be held. One item on the agenda was stated to be to consider the report, which was set out in full. Copies of the notice were, as usual, sent to the librarians of all the council's public libraries, where they could be seen by readers by request. The plaintiffs sued the council and the town clerk for libel, but Wrottesley, J., held the publication privileged, ruled that there was no evidence of malice to go to the jury, and directed them to enter a verdict for the defendants. The plaintiffs appealed.

Lord Greene, M.R., said that it was argued that the notice which s. 9 of the Act of 1856 required to be affixed to the door of the building where the meeting was to be held had to be one which not merely set out the agenda of the meeting in terms sufficient to explain what was being done, but must also contain all the particulars which were going to be referred to at the meeting. He could not accept that view. All that the Act required was the giving of a notice which specified with sufficient clarity what the special purposes of the meeting were. To rely on the section as justifying the publication of the report of a sub-committee which was going to be considered at the meeting was impossible in view of the language of the section, which contemplated something much more limited and practical. It did not matter in itself if the whole of the documents to be referred to at a meeting were put up outside the town hall for inspection; but the position was quite different where they contained defamatory matter. The arguments before Wrottesley, J., had proceeded on the basis of a plea, although it was not to be found in the defence, of privilege based on common interest with the ratepayers. Wherever any important deviation from the pleadings took place at the trial of an action it was of the utmost importance that that deviation should be put in the form of a proper amendment of the pleadings. The whole question now for the court, therefore, was whether the allegation of privilege was established. What duty had the council to communicate to the ratepayers of Stepney the report of a committee which the council were proposing to consider, and which set out the names of employees who had been accused of complicity in the thefts which had taken place and made a recommendation in relation to those employees? How could it be the duty of the council to make that communication to the ratepayers? The matter was in a sense *sub judice*, because the committee's report by itself could have no practical value until the council had considered it and arrived at a resolution on it. At that stage in the operation of the administrative machinery of the borough there was no duty to tell ratepayers how the wheels were going round. Again, it could not be said that the council had at that stage of the inquiries an interest in communicating to the ratepayers the circumstance that the committee had reported in the terms in question. It was obvious that ratepayres were interested in the proper administration of their property, but they were not interested in the internal working of the administrative machine until it emerged in the shape of some practical action. The plea of privilege was accordingly not made out, and the appeal would be allowed, with costs. The verdict of the jury and the judgment of Wrottesley, J., must be set aside, and the case sent back for a new trial.

Goddard and du Parcq, L.JJ., agreed.

Counsel: *Gerald Gardiner; Roberts*, K.C., *Havers*, K.C., *Valentine Holmes* and *Erskine Simes*.

Solicitors: *Pattinson & Brewer; J. E. Arnold James.*

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

## CHANCERY DIVISION.

***In re* Middlesex Brick Company, Ltd.**

Simonds, J. 27th October, 1941.

*Emergency legislation — Winding-up petition — Debts incurred after 3rd September, 1939—Inability to pay due to war—Whether company can claim relief—Courts (Emergency Powers) Act, 1939 (2 & 3 Geo. 6, c. 67), s. 1 (5).*

Petition.

M, Ltd., carried on the business of manufacturing bricks. On the 1st June, 1940, part of its land was requisitioned. This greatly hampered its business. It incurred debts after September, 1940, amounting to over £4,000 to the petitioning creditor. On the 26th August, 1941, the petitioning creditor brought an action to recover this sum and judgment was entered in default of appearance on the 9th September, 1941. The company in those proceedings did not seek to avail itself of the assistance of the Courts (Emergency Powers) Act, 1939. Thereupon the petitioning creditor presented this petition for the compulsory winding up of the company. The company claimed relief under subs. (5) of s. 1 of the Act on the ground that they were not insolvent and their difficulties were entirely due to the requisitioning of their land. When they received the compensation due they stated that they would be in a position to satisfy their creditors. Subsection (5) of s. 1 provides that "where . . . a winding-up petition has been presented against any company on the ground that it is unable to pay its debts" and the company proves that its inability to pay is due to circumstances attributable to the war, the court may stay the proceedings under the petition.

Simonds, J., said that the first question was whether he had jurisdiction to grant relief under s. 1 (5). The earlier subsections of s. 1 dealt only with a liability accruing in respect of contracts which had been entered into before the war, and it was argued that effect must be given to subs. (5) as if it dealt only with such liabilities. In his opinion the subsection was too plain to give effect to that contention; it was comprehensive. It referred to inability to pay debts without any reference to the time at which or the manner in which they were incurred. Accordingly, the court had jurisdiction to grant relief in any case where it was proved that the company's inability to pay debts was due to the war. This was a proper case in which to exercise the discretion in favour of the company.

Counsel: *Cecil Turner; Wynn Parry*, K.C., and *T. D. Divine.*

Solicitors: *E. F. Turner & Co.; Trower, Steel & Keeling.*

[Reported by Miss B. A. Bicknell, Barrister-at-Law.]

# Parliamentary News.

## Progress of Bills.

### House of Lords.

Patents and Designs Bill [H.L.].
Read Second Time. [2nd December.

Expiring Laws Continuance Bill [H.C.].
Read Second Time. [10th December.

Arthur Jenkins Indemnity Bill [H.C.].

Patents and Designs Bill [H.L.].
Read Third Time. [10th December.

### House of Commons.

Sugar Industry Bill [H.C.].
Read First Time. [25th November.

Landlord and Tenant (Requisitioned Land) Bill [H.C.].
Read First Time. [2nd December.

National Service Bill [H.C.].
In Committee. [10th December.

# Societies.

## LAW ASSOCIATION.

The usual monthly meeting of the directors was held on the 1st December, Mr. John Venning in the chair. The other directors present were Mr. E. Evelyn Barron, Mr. Guy H. Cholmeley, Mr. Arthur E. Clarke, Mr. C. A. Dawson, Mr. Douglas T. Garrett, Mr. W. Alan Gillett, Mr. Ernest Goddard, Mr. G. D. Hugh Jones, Mr. C. D. Medley, Mr. William Winterbotham and the secretary, Mr. Andrew H. Morton. A sum of £228 was voted in relief of deserving applicants and other general business was transacted.

## SOLICITORS' BENEVOLENT ASSOCIATION.

With reference to the report of the annual meeting of the above, published in our issue of the 1st November, at p. 426, the Chairman, Mr. Gerald L. Addison, stated that s. 25 of the Finance Act, 1941, *reduced* (not *cancelled*, as appeared in the report) the benefit which charities had hitherto received in repayment of income tax on covenanted subscriptions, except those covenanted before the outbreak of war.

## WESTMINSTER'S PAPER SALVAGE COLLECTION.

Special Week 15th–21st December.

The Editor has received a letter from the Mayor of the City of Westminster in which he states that he has gratefully accepted the generous offer of an anonymous donor to give to charitable organisations for sailors, soldiers and airmen the sum of £10 for every ton of paper collected in the City of Westminster during the week commencing Monday, the 15th December. He is anxious to enlist the support of the professional interests of the city, and is convinced that in most solicitors' offices there is still a vast amount of out-of-date supplements to statutes, obsolete text-books and precedent books, diaries, Law Lists, cash-books and journals, quite apart from papers connected with clients' affairs with which he fully appreciates a solicitor may have difficulty in parting. He asks the Editor, therefore, to bring this effort to the notice of the profession and thus materially assist his effort to obtain every available pound of waste paper, which is so urgently needed for the national effort, and at the same time reap many pounds for the benefit of the benevolent funds of the three fighting services.

Mr. John Verity, Chief Justice of Zanzibar, has been appointed Chief Justice of British Guiana, in succession to the late Sir Maurice Camacho.